THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No: 9243 of 1996

Between:

K.Krishna.

..... PETITIONER

AND

The Nellore District Govt. Employees Coop. Cr. Society Ltd. And another.

.....RESPONDENTS

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ORDER:

Relief sought for in this writ petition is for a direction to the respondents to continue the petitioner as a clerk and to absorb him in the first respondent society.

The facts, to the extent necessary for the purpose of this writ petition, are that the petitioner, who belongs to the scheduled caste community, had passed SSC in the year 1988. He was appointed temporarily as attender on a consolidated pay of

Rs.1,000/- per month in the first respondent Society. His appointment was subject to ratification by the Board of Directors. It is the case of the petitioner that he was assured on 23-12-1995 that he would be absorbed in the regular vacancy of clerk. Petitioner contends that he was prevented from discharging his duties by the Manager, who was neither the competent authority nor was he empowered to do so.

Sri T.Jagdish, learned counsel for the petitioner, submits that under Section 116-B (a) of the Andhra Pradesh Co-operative Societies Act (for short "the Act"), the Government is empowered to give directions to a Society to make provisions for reservation in appointment or posts, under any such Society or in any cadre created under the said Society, in favour of the scheduled castes. Learned counsel would also rely on Section 116-C(1) of the Act, whereunder, a Society shall have power to fix the staffing pattern qualifications, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies. Learned counsel would contend that, insofar as the class of societies to which the first respondent society belongs, it is the second respondent, who is the Registrar under Section 116-C of the Act. Learned counsel would submit that since the second respondent had failed to discharge his statutory obligations and fix the staffing pattern in which event the petitioner, being a scheduled caste candidate, would have been entitled for absorption, the relief sought for in the writ petition, ought to be granted.

Both Sri P.Sridhar Reddy, learned counsel for the first respondent and the learned Government Pleader for Co-operation appearing for the second respondent, vehemently contend that the writ petition filed against the first respondent society is not maintainable, inasmuch as the first respondent is not an instrumentality of the State under Article 12 of the Constitution of India.

The submissions of the learned counsel of the petitioner are no doubt attractive. The fact, however remains, that these contentions do not form part of the pleadings and are not borne out by the record. Whether or not any directions have been given by the Government under Section 116-B, whether or not the first respondent society has, with the prior approval of the 2nd respondent, fixed its staffing pattern and as to whether, despite such staffing pattern being fixed by the first respondent, the second respondent has not granted approval under Section 116-C of the Act, are all questions which can only be examined on the basis of pleadings and on the material available on record and in the absence thereof, the contentions urged, cannot be subjected to judicial scrutiny in this writ petition. No relief is sought for in the writ petition against the second respondent nor are there any averment made in the affidavit filed in support thereof regarding inaction or violation of any statutory provisions by the second respondent. The writ petition, insofar as the first respondent is concerned, is not maintainable, in view of the judgment of the Full Bench of this court in **KONASEMA CO-OPERATIVE CENTRAL BANK LIMITED** v **N.SEETHARAMA RAJU**, as the first respondent society is not an instrumentality of the State under Article 12 of the Constitution of India.

Sri T.Jagdish, learned counsel for the petitioner, would however submit that the petitioner has submitted a detailed representation to the second respondent seeking relief of absorption on the basis of violation of Sections 116-B and 116-C of the Act. Needless to state that this question, not being the subject matter of the writ petition, is left open. It is for the petitioner herein to take recourse to such remedies as are available to him in law.

The writ petition is accordingly dismissed. No order as to costs.

RAMESH RANGANATHAN, J

Dated: 31-08-2005

Prv